

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA,)	
)	
v.)	CRIMINAL NO. 3:18-33
)	
KELLY B. SHAULIS,)	JUDGE KIM R. GIBSON
)	
Defendant.)	

MEMORANDUM OPINION

I. Introduction

Before the Court are Defendant Kelly Shaulis' two Motions to Suppress. (ECF Nos. 28, 54.) Shaulis seeks to suppress evidence found as a result of law enforcement executing two separate arrest warrants at his residence. Shaulis asserts that he is the victim of two unlawful searches and that this Court should exclude any evidence found as a result of these searches. The motions are fully briefed (ECF Nos. 28, 29, 54, 55, 66, 67) and ripe for disposition. For the reasons that follow, the Court denies the motions.

II. Background

This case arises from the execution, at Shaulis' residence, of two separate arrest warrants issued for him, the protective sweeps that occurred during and after the execution of the warrants, and evidence obtained in searches following the execution of the warrants. Agents of the Pennsylvania Office of the Attorney General executed the first arrest warrant on June 5, 2017 (the "OAG Sweep"). Agents of the Bureau of Alcohol, Tobacco, Firearms, and Explosives executed the second arrest warrant on December 21, 2018 (the "ATF Sweep").

The OAG Sweep occurred as a result of an investigation into a drug ring in Somerset County, Pennsylvania, which identified Shaulis as a possible supplier of methamphetamine and,

as a result, an arrest warrant issued for Shaulis. The Somerset County Magisterial District Court held a preliminary hearing regarding Shaulis' case on July 7, 2017, and the Somerset County Court of Common Pleas conducted a two-day suppression hearing on April 27, 2018, and May 15, 2018. (*See* ECF No. 57, Gov't Exs. 1–3.)¹

On December 12, 2018, a federal grand jury indicted Shaulis on one count of unlawful possession of a firearm by a convicted felon, in violation of 18 U.S.C. § 922(g)(1), on or about June 5, 2017. (ECF No. 1.) On December 21, 2018, Shaulis made his initial appearance and pleaded not guilty. (*See* ECF No. 9.)

On April 15, 2019, Shaulis filed a Motion to Suppress Physical Evidence obtained during the OAG Sweep. (ECF No. 28.) The Government responded on May 24, 2019. (ECF No. 40.) On June 11, 2019, the Government filed a First Superseding Indictment, adding a second count of unlawful possession of a firearm by a convicted felon, on or about December 21, 2018, in violation of 18 U.S.C. § 922(g)(1). (ECF No. 43.) Shaulis then filed a Motion to Suppress Physical Evidence—ATF on July 12, 2019. (ECF No. 54.) The Government responded on July 19, 2019. (ECF No. 55.)

The Court held a consolidated suppression hearing on both motions on August 1, 2019. (*See* ECF Nos. 57, 58.) At the suppression hearing, addressing the motion to suppress the

¹ The Government introduced three transcripts from the state suppression proceedings. These are Government's Exhibits 1, 2, and 3, respectively. Exhibit 1 is the transcript from the preliminary hearing conducted on July 7, 2017 in the Somerset County Magisterial Court before the Honorable Kenneth W. Johnson. Exhibits 2 and 3 are transcripts from Shaulis' suppression hearing conducted in the Somerset County Court of Common Pleas before the Honorable D. Gregory Geary on April 27, 2018 and May 15, 2018. Citations to specific portions of these transcripts will be in the form of "Gov't Ex. [X] at [Y]". Citations to testimony from Shaulis' suppression hearing held before this Court will be to "ECF No. 57 at [X]." Shaulis also introduced several exhibits from the state court proceedings, and citations to those exhibits will be to "Def. Ex. [X]."

evidence obtained from the OAG Sweep, the Government presented stipulated transcripts of testimony and other exhibits from the earlier state court proceedings (Gov't Exs. 1–12) and rested. (See ECF Nos. 57 at 8, 28.) Shaulis presented the testimony of one witness, Cash Shaulis, Shaulis' son. (See ECF No. 57 at 11–27.) Shaulis also introduced the following stipulated exhibits, also from the prior state court proceeding: (1) a photograph of the front of Shaulis' house (Def. Ex. 1); (2) a photograph of the west side of Shaulis' house with double door entering into the basement (Def. Ex. 2); (3) a photograph of the back side of Shaulis' house with a sliding glass door (Def. Ex. 3); (4) a photograph of the sliding glass door at the back of Shaulis' house (Def. Ex. 4); (5) a photograph of the kitchen of Shaulis' house (Def. Ex. 5); and (6) a second photograph of Shaulis' kitchen (Def. Ex. 6). Each of the photographs were taken shortly after June 5, 2017.

On the motion to suppress the fruits of the ATF Sweep, the Government presented the testimony of one witness, Special Agent Kevin Kauffman. (See ECF No. 57.) The Government introduced the following exhibits: (1) Shaulis' arrest warrant, executed on December 21, 2018 (Gov't Ex. 13); (2) a diagram of Shaulis' house (Gov't Ex. 14); (3) a photograph of the front and east side of Shaulis' house (Gov't Ex. 15); (4) a photograph of the rear of Shaulis' house (Gov't Ex. 16); (5) a photograph of the rear sliding door (Gov't Ex. 17); (6) a photograph of the western back portion of Shaulis' house (Gov't Ex. 18); (7) a photograph of the west end of Shaulis' house (Gov't Ex. 19); (8) a photograph of a chopping block (Gov't Ex. 20); (9) a photograph of a gun safe (Gov't Ex. 21); (10) a second photograph of the gun safe (Gov't Ex. 23); (11) a search warrant issued after Shaulis' arrest on December 21, 2018 (Gov't Ex. 24); and (12) a property receipt (Gov't Ex. 25). Shaulis did not present any evidence.

Following the suppression hearing, Shaulis filed a post-hearing Brief in Support of his Motions to Suppress on August 28, 2019. (ECF No. 66.) The Government filed its Brief in Opposition on the same day. (ECF No. 67.) Both parties agreed not to file a response to the other party's brief. (ECF No. 68.)

In support of his motions to suppress, Shaulis makes two principal arguments: (1) neither the OAG agents nor the ATF agents were in a lawful position to view the firearms when they discovered them while executing the arrest warrant, and the searches therefore violated the Fourth Amendment (ECF No. 67 at 8–16); and (2) the affidavits filed in support of search warrants obtained after arresting Shaulis failed to provide a sufficient factual basis to support a probable cause determination. (*Id.* at 16–24.)

III. Findings of Fact

The Court makes the following findings of fact based on the evidence and testimony presented at the suppression hearing:

a. The Defendant and His Family

1. Shaulis is a convicted felon and is not permitted to possess a firearm in the Commonwealth of Pennsylvania. (Gov't Ex. 1 at 6:9–19; Gov't Ex. 2 at 1.20:13–23.)
2. Shaulis resides at 591 Pike Run Road, Somerset, Pennsylvania. (Gov't Ex. 1 at 21:6–9.)
3. Also residing at 591 Pike Run Road, as of June 5, 2017, were Shaulis' wife, Rebecca Van Deusen, and Shaulis' son, Cash. (Gov't Ex. 3 at 2.67:19; 2.68:25–26:1; 2.84:19–21.)
4. At some time before December 21, 2018, Rebecca Van Deusen moved out of the residence at 591 Pike Run Road. (ECF No. 57 at 37:16–19.)

5. Shaulis' house cannot be accessed from the front door, which sits one floor above ground level; in front of the door is a large shipping container, which serves as a front porch. (Gov't Ex. 2 at 1.24:3–6; Def. Ex. 1.)
6. At the time of the OAG Sweep, Cash was approximately 12 years old; at the time of the suppression hearing in this Court, he was 14 years old. (Gov't Ex. 3 at 2.35:7–25; ECF No. 57 at 11:11.)
7. At the time of the OAG Sweep, Shaulis worked as a mechanic on diesel trucks. (Gov't Ex. 3 at 2.84:8–18.)
8. Shaulis keeps his work clothes, work boots, and other related items in the basement, with a washer, dryer, and shower to avoid tracking dirt throughout his residence. (Gov't Ex. 3 at 2.86:1–11.)
9. Cash has access to ammunition stored in a gun safe in the basement; that gun safe was unlocked on June 4, 2017, the day prior to the OAG Sweep. (ECF No. 57 at 15:13–19:25.)
10. On June 4, 2017, there were multiple firearms stored in the gun safe in the basement. (*Id.* at 20:2–25.)
11. The gun safe is approximately six feet tall, four feet wide, and three feet deep, and appears large enough to potentially conceal a person. (*Id.* at 56:21–57:2.)

b. The OAG and ATF Agents

12. Agent Craig Pavlosky is an agent in the Bureau of Narcotics Investigation and Drug Control in the Pennsylvania Office of the Attorney General, and has worked there since March, 2013; he has been a law enforcement officer since 1994. (Gov't Ex. 1 at 13:24–15:9; Gov't Ex. 2 at 1.18:15–23.)

13. Agent Pavlosky's duties consist of investigating drug crimes and he is trained in those investigations, including identifying controlled substances. (Gov't Ex. 1 at 15:9–17.)
14. Agent Michael Kanuch has worked in law enforcement for fourteen years, first in the Johnstown police department, and now with the Pennsylvania Office of the Attorney General. (Gov't Ex. 2 at 1.76:19–1.77:25.)
15. Agent Kanuch was a member of the Cambria County SWAT team for ten years, and during that period received training on protective sweeps from both the National Tactical Officers Association and the Pennsylvania Tactical Officers Association. (*Id.* at 1.77:4–18.)
16. Agent Kanuch is also a member of the Pennsylvania State Attorney General's SWAT team and, in his various capacities, has executed hundreds of tactical entries. (*Id.* at 1.89:10–21.)
17. As a SWAT team member, Agent Kanuch has executed arrest warrants where he has arrested a husband and then been attacked or assaulted by the husband's wife. (*Id.* at 1.93:9–15.)
18. Agent Joseph Barna is a Narcotics Agent II with the Pennsylvania Office of the Attorney General, and he has worked in that position for at least two years. (Gov't Ex. 3 at 2.2:13–23; Gov't Ex. 6.)
19. Prior to his position with the Office of the Attorney General, Agent Barna worked for the Pittsburgh Police Department for at least four years. (Gov't Ex. 3 at 2.3:2–6.)
20. Prior to the OAG Sweep, Agents Pavlosky, Kanuch, and Barna were aware of Shaulis' past conviction for unlawful possession of a firearm. (Gov't Ex. 2 at 1.20:11–15; 1.78:11–17; Gov't Ex. 3 at 2.3:17–19.)

21. Agents Pavlosky, Kanuch, and Barna were aware that Shaulis' household contained three members: Shaulis, his wife, and Cash. (Gov't Ex. 2 at 1.87:19–1.79:3; Gov't Ex. 3 at 2.3:24–2.4:3.)
22. Kevin Kauffman is a Special Agent with the Bureau of Alcohol, Tobacco, Firearms, and Explosives (the "ATF") in Pennsylvania, and has worked for the ATF for over 18 years. (ECF No. 57 at 27:17–23.)
23. Special Agent Kauffman has received training specific to violations of 18 U.S.C. § 922(g)(1), unlawful possession of a firearm by a convicted felon, the same crime for which the grand jury indicted Shaulis. (*Id.* at 28:2–11.)
24. Special Agent Kauffman is the designated instructor and trainer for arrest techniques and defense tactics in his office, a position that he has served in for sixteen years. (*Id.* at 28:19–25.)
25. In his work for the ATF, Special Agent Kauffman has executed somewhere between one and two hundred arrest and search warrants. (*Id.* at 29:1–6; 71:12–17.)
26. Prior to the ATF Sweep, Special Agent Kauffman was aware of Shaulis' past criminal history and familiarity with firearms. (*Id.* at 39:1–22.)

c. The OAG Sweep

27. In July, 2016, Agent Pavlosky began an investigation into a methamphetamine ring in Somerset County, Pennsylvania, the target of which was Jeffrey Mostoller. (Gov't Ex. 1 at 15:18–16:4.)
28. As a result of his investigation into Mostoller, Agent Pavlosky identified Shaulis as a potential source of methamphetamine for Mostoller. (*Id.* at 16:6–17:18; 19:1–7; 20:2–27:3.)

29. After Agent Pavlosky identified Shaulis as Mostoller's source of methamphetamine, Agent Pavlosky swore an affidavit on a criminal complaint identifying Shaulis, resulting in an arrest warrant. (*Id.* at 27:4–8.; *see* Gov't Exs. 4, 5.)
30. Agent Pavlosky, accompanied by Agents Michael Kanuch, Rick Miller, and Joseph Barna, among others (collectively, the "OAG agents"), executed the arrest warrant on June 5, 2017, at Shaulis' residence at 591 Pike Run Road in Somerset. (Gov't Ex. 1 at 27:9–28:3; Gov't Ex. 2 at 1.24:16–17; 1.80:5–11.)
31. At Shaulis' residence, the OAG Agents went to the rear of the house, knocked on an open a sliding glass door, and announced their presence, telling those inside to open the door. (Gov't Ex. 1 at 28:7–15; Gov't Ex. 2 at 1.24:19–1.25:11.)
32. When Shaulis did not initially respond, Agent Pavlosky went to his vehicle to place a call to Shaulis and, as he did so, he heard commands that his fellow agents made to another person; this person was later identified as Shaulis' son, Cash. (Gov't Ex. 1 at 28:15–29:7; Gov't Ex. 2 at 1.25:13–1.26:21; Gov't Ex. 2 at 1.49:1–1.50:1.)
33. Cash woke up to hear the shouting of the OAG agents, left his bedroom adjoining the kitchen on the far side from the sliding glass door, and exited the residence at the instruction of the OAG agents. (ECF No. 57 at 11:23–13:17.)
34. After Cash was instructed to exit the house, somewhere between three and five minutes later, Shaulis appeared at the top of the basement steps, turned around, and immediately closed the door. (Gov't Ex. 2 at 1.84:10–1.85:15; 1.91:21–25.)

35. The basement stairs are located on the far back wall of the kitchen, opposite from the sliding door through which the OAG agents entered, next to Cash's bedroom. (Gov't Ex. 14.)
36. Between the time that Cash exited the residence and Shaulis appeared at the top of the stairs, the OAG agents heard yelling from an unidentified source inside. (Gov't Ex. 3 at 2.6:15–25.)
37. After Shaulis shut the door, he complied with the OAG agents' directive, and the OAG agents then entered the residence and placed Shaulis in custody. (*Id.* at 1.85:21–1.86:6.)
38. After entering the residence, while securing Shaulis, the OAG agents saw ammunition laying on the floor next to Cash's bedroom. (*Id.* at 30:2–8; Gov't Ex. 2 at 1.28:20–23; 1.30:5–13; 1.86:1–6.)
39. At the time of the arrest, the OAG agents were unaware of the location of Shaulis' wife. (Gov't Ex. 2 at 1.32:7–15; Gov't Ex. 3 at 2.8:21–24.)
40. Following Shaulis' arrest, the OAG agents conducted a protective sweep of the residence. (Gov't Ex. 1 at 30:19–20; Gov't Ex. 2 at 1.28:2–10.)
41. The protective sweep consisted of "clearing" the house, looking in places, such as showers, closets, and other places that could conceal a person who might pose a threat to law enforcement personnel; it did not consist of an in-depth search of Shaulis' residence. (Gov't Ex. 2 at 1.33:9–1.37:1; 1.74:4–23.)
42. The protective sweep began with Agents Pavlosky and Barna clearing the main floor of the residence where Shaulis was arrested, then the top floor, then the basement. (Gov't Ex. 2 at 1.86:9–24.)

43. Agents believed the protective sweep was justified based on the time it took to answer the knocking, the time it took for Shaulis to appear, the fact that the sliding door was open, the unidentified yelling in the basement, the fact that Shaulis closed the door to the basement before he complied with the OAG agents' directives, and the ammunition found on the ground, as well as the fact that they did not know where Shaulis' wife was. (Gov't Ex. 1 at 30:20–24; Gov't Ex. 2 at 1.28:15–25; 1.32:2–10; 1.94:2–9.)
44. During the protective sweep, the OAG agents entered the basement, from where Shaulis had emerged, discovered an area difficult to sweep as a result of scattered items throughout the room, and found firearms in plain view in what they described as a “den” or “living room.” (Gov't Ex. 2 at 1.35:21–1.368; 1.87:1–1.88:7.)
45. This “den” or “living room” is also referred to as Shaulis' “man cave.” (Gov't Ex. 1 at 34:12–13; Gov't Ex. 3 at 2.89:17–18.)
46. After descending the stairs from the kitchen to the basement, there is a wall, and a person descending the stairs must turn either left or right; on the right is an unfinished area, on the left are double doors opening out to the ground level, and past the doors, behind the stairs, is the man cave. (Gov't Ex. 2 at 1.34:21–1.35:7; Gov't Ex. 14.)
47. As a result of the protective sweep, during which they observed firearms, and as a result of statements made by Shaulis' wife that there might be marijuana in the man cave and a handgun in the house, the OAG agents sought a search warrant, sworn by Agent Barna. (Gov't Ex. 1 at 30:25–31:6; Gov't Ex. 2 at 1.70:19–1.72:9; 1.88:1–1.89:7; *see* Gov't Ex. 6.)

48. Agent Pavlosky, among others, executed the search warrant, approximately three to four hours after Shaulis' arrest, on June 5, 2017. (Gov't Ex. 1 at 31: 8–14; Gov't Ex. 3 at 2.72:20–2.73:3; Gov't Ex. 6.)
49. While searching the basement of the house, from where Shaulis emerged prior to his arrest, Agent Pavlosky found a large, unlocked gun safe, which contained the following firearms: (1) a Savage rifle, usually used for hunting; (2) a Japanese rifle; (3) a Rossi rifle; (4) a Remington shotgun; (5) a Marlin rifle; (6) a Browning shotgun; (7) a second Marlin rifle; and (8) a Mossberg shotgun, as well as a substantial quantity of ammunition. (Gov't Ex. 1 at 33:7–15; 35:8–15; 38:7–15; *see* Gov't Ex. 7.)
50. In addition, in the basement, near the gun safe, Pavlosky found a clothes dresser that contained male clothing. (Gov't Ex. 1 at 33: 20–35:7.)
51. In Shaulis' man cave, the door to which is located approximately a foot from the gun safe, Pavlosky discovered the following firearms: (1) a Remington rifle; and (2) a second Savage rifle, as well as \$12,442 in U.S. currency. (*Id.* at 34:3–13; 38:16–39:13.)
52. In the man cave, Pavlosky discovered a bottle of Wild Turkey alcohol, men's boots, clothing, hunting magazines, animal skulls and other hunting-related items, and marijuana, as well as Shaulis' driver's license. (*Id.* at 39:24–40:24; *see* Gov't Exs. 7–10.)

d. The Search Warrant Affidavit

53. The search warrant affidavit recites that, during their protective sweep, the OAG agents discovered "multiple rifles" in the basement. (Gov't Ex. 6.)
54. The search warrant affidavit also states that Shaulis' wife told Agent Pavlosky that there might be marijuana in the man cave and a handgun in the house. (*Id.*)

55. The search warrant affidavit recites that Shaulis has a prior conviction for violating 18 U.S.C. § 922(g)(1). (*Id.*)

e. The ATF Sweep

56. As a result of the OAG Sweep and the ensuing search of Shaulis' residence, Special Agent Kauffman obtained a federal arrest warrant for Shaulis on December 13, 2018. (ECF No. 57 at 31:2–32:7; Gov't Ex. 13.)

57. The ATF executed that warrant on December 21, 2018, which resulted in the ATF Sweep. (ECF No. 57 at 29:23–24.)

58. Present during the execution of the warrant were supervisor Jim Price, Special Agents Rennig, Maines, DuThinh, O'Sullivan, Farabaugh, Wilmer, Calamaro, and Schumacher, as well as Pennsylvania State Trooper Kozuch (collectively, the "ATF agents"). (*Id.* at 32:18–25.)

59. As of the time of the execution of the arrest warrant, the ATF agents were unsure of how many people would be in the residence, and where in the residence they would be located. (*Id.* at 37:3–38:10.)

60. The ATF agents planned to execute the arrest warrant at approximately 6:00 a.m. (*Id.* at 4:2–4.)

61. The ATF agents split into two groups; Special Agent Kauffman's group, composed of Kauffman and Special Agents Calamaro, Wilmer, and O'Sullivan, planned to enter Shaulis' residence through the basement double doors. (*Id.* at 41:5–8; 49:11; *see* Gov't Ex. 19.)

62. The other group of ATF agents, composed of Special Agents Rennig, Farabaugh, and Schumacher, planned to enter through the same sliding door that the OAG agents entered through on June 5, 2017. (ECF No. 57 at 45:3–23; 47:23–24; 50:11; *see* Gov't Ex. 17.)
63. At approximately 6:00 a.m., the ATF agents began knocking and announcing at both entry points, instructing the residents of Shaulis' house to come to the door; this continued for somewhere between twenty and thirty seconds, with no response. (ECF No. 57 at 50:20–51:12.)
64. Hearing no response, after the knock and announce, Special Agent Kauffman, as well as Special Agents Calamaro, Wilmer, and O'Sullivan entered through the unlocked double doors in the basement. (*Id.* at 52:5–12.)
65. After entering the basement, Special Agent Kauffman and another agent began clearing the basement, and went into the finished portion of the basement, which had dressers, an easy chair, and a desk, and viewed ammunition on top of one the dressers, along with rifle scopes. (*Id.* at 52:20–54:13.)
66. While clearing the basement, Special Agent Wilmer looked into the gun safe, which was ajar, and spotted a firearm. (*Id.* at 56:14–57:9; *see* Gov't Ex. 21.)
67. The firearms seen while clearing Shaulis' residence may have included antique muzzle-loading firearms. (ECF No. 57 at 104:20.)
68. The ATF agents arrested Shaulis in the kitchen, not in the basement, and before Special Agent Kauffman exited the basement through the stairs into the kitchen, he was unaware that they had arrested Shaulis. (*Id.* at 57:10–23.)

69. Following Shaulis' arrest, the ATF agents performed a protective sweep of the residence, during which they made no further relevant observations. (*Id.* at 59:9–21.)
70. After the sweep, based on the discovery of the firearms in the safe, Special Agent Kauffman applied for a federal search warrant. (*Id.* at 59:22–60:5; *see* Gov't Ex. 24.)
71. In support of that search warrant, Special Agent Kauffman executed an affidavit stating that, during the execution of the arrest warrant, the ATF agents had found ammunition and firearms in plain view while clearing Shaulis' residence. (ECF No. 57 at 65:19–66:12; Gov't Ex. 24.)
72. Some of the ATF agents remained in Shaulis' residence from approximately 7:00 a.m., after Shaulis was removed from the premises, until the search warrant issued at 10:45 a.m. (ECF No. 57 at 60:11–61:14.)
73. While executing the search warrant, the ATF agents found two firearms, assorted ammunition, and a "smoking pipe." (ECF No. 57 at 63:18–64:17; Gov't Ex. 25.)

IV. Conclusions of Law

Based on the above findings of fact, the Court will now proceed to address Shaulis' arguments in support of his Motion to Suppress: (1) the protective sweep doctrine does not permit the OAG Sweep conducted while arresting Shaulis; (2) Agent Barna's affidavit used to obtain the search warrant lacked sufficient foundation for probable cause; (3) the ATF agents were not permitted to enter through the basement to arrest Shaulis; (4) there was no reasonable suspicion for the ATF agents to conduct the protective sweep; and (5) the facts contained within Agent Kauffman's affidavit fail to support probable cause.

The Court will begin with an overview of the Fourth Amendment, then address each of Shaulis' arguments.

a. The Fourth Amendment Generally

The Fourth Amendment to the United States Constitution gives citizens protection from unreasonable governmental searches and seizures. Specifically, it provides that:

[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

U.S. Const. amend IV. The government triggers the protections of the Fourth Amendment when it invades an area where an individual has a "constitutionally protected reasonable expectation of privacy." *New York v. Class*, 475 U.S. 106, 112 (1986) (citing *Katz v. United States*, 389 U.S. 347, 360 (1967) (Harlan, J., concurring)). To prevail on motion to suppress, the defendant must show both that the search was unlawful and that he had the required "reasonable expectation of privacy" in the area searched. *Rawlings v. Kentucky*, 448 U.S. 98, 104 (1980). In ruling on the suppression motion, the district court determines the credibility of witnesses, the weight of the evidence, and the deductions and conclusions it will draw from the evidence adduced at the suppression hearing. *United States v. Leveto*, 343 F. Supp. 2d 434, 442 (W.D. Pa. 2004). The defendant initially bears the burden of proof, but once he has established a basis for the suppression motion and made a colorable claim, the government then shoulders the burden. *United States v. Johnson*, 63 F.3d 242, 245 (3d Cir. 1995).

b. The OAG Sweep

Shaulis argues that the protective sweep that the OAG agents performed following his arrest violated his Fourth Amendment rights in two ways: (1) the basement was not “immediately adjacent” to the kitchen where he was arrested, and therefore the OAG agents could not, as a matter of right, search the basement; and (2) the OAG agents could have swept the basement if they had reasonable suspicion that someone dangerous was there, but that no such reasonable suspicion existed or could have existed. Shaulis also claims that the affidavit filed in support of the search warrant obtained following the OAG Sweep lacked sufficient facts to give rise to probable cause. As will be thoroughly examined below, although Shaulis prevails on his first argument, he fails on the remaining two.

1. The OAG Agents Were Not Permitted to Sweep the Basement Without Reasonable Suspicion Because It Is Not Immediately Adjacent to the Kitchen

Shaulis contends that the kitchen where the OAG agents arrested him and the basement where the guns were found were not immediately adjacent to each other such that the OAG agents could sweep the basement as a matter of right, without any reason to believe that there might be a danger lurking in some remote area of the basement. (ECF No. 28 at 2–6.) Specifically, Shaulis contends that the OAG agents “clearly conducted a protective sweep well beyond the areas immediately adjacent to [Shaulis] when they left the kitchen area, opened the door to [a] narrow [sic] closed staircase down to the basement area, entered the basement level of the home and then entered a third room, which was not adjacent to the kitchen area. . . .” (*Id.* at 6.) In support of this argument, Shaulis notes that the basement door was closed when he was arrested and that the basement is on an entirely separate level from the kitchen where the ATF agents

arrested him. (*Id.* at 14.) In response, the Government contends that the basement immediately adjoined the kitchen, so that they may search the basement without particularized suspicion. (ECF No. 67 at 12–13.)

When law enforcement agents execute an arrest warrant, they may make a protective sweep, a “quick and limited search of premises, incident to an arrest,” for “the safety of police officers.” *Maryland v. Buie*, 494 U.S. 325, 327 (1990). A protective sweep may only consist of a “ cursory visual inspection of those places in which a person might be hiding.” *Id.* This cursory sweep, made without probable cause or reasonable suspicion is limited to areas that immediately adjoin the place of arrest. *Id.* at 334.

In addition to sweeps of the immediately adjacent area that are justified with no suspicion, the Fourth Amendment permits law enforcement to make a broader protective sweep if the sweeping officers have a “reasonable belief based on specific and articulable facts which, taken together with the rational inferences from those facts, reasonably warrant the officer in believing that the area to be swept harbor[s] an individual posing a danger to the officer or others.” *Id.* at 327 (internal citations and quotations omitted).

Essentially, *Buie* consists of two prongs: (1) police may execute a warrantless search of a home incident to an arrest in that home of the areas “immediately adjoining” the arrest location from which an attack could be “immediately launched;” and (2) if police wish to execute a search

beyond those areas, they must have a “reasonable and articulable suspicion” that someone may be lying in wait for them in those areas.² *United States v. White*, 748 F.3d 507, 511 (3d Cir. 2014).

Shaulis concedes that, following his arrest, the OAG agents could, pursuant to *Buie* prong one, sweep the “immediate area of the kitchen which could conceal an assailant,” which includes the kitchen, the stairwell to the basement, the hallway, the family room, Cash’s bedroom, and the bathroom down the hall. (ECF No. 66 at 14; *see* Gov’t Ex. 14.) Shaulis, however, disputes that the basement is part of that “immediate area.” (*Id.* at 6.) In response, the Government contends that when an arrest occurs within a residence, *Buie* prong 1 justifies a suspicionless sweep of the entire residence and, because the OAG agents arrested Shaulis inside his residence, the search was within the bounds of the Fourth Amendment. (ECF No. 40 at 8.) Additionally, the Government argues that the basement was “immediately adjacent” to the kitchen where the OAG agents arrested Shaulis. (*Id.*)

The Court agrees with the Shaulis that the OAG agents needed reasonable suspicion to sweep the basement because the basement, and particularly the man cave, was not “immediately adjacent” to the kitchen. “Adjacent” is defined as “[n]ext to or very near something else; neighboring; bordering; contiguous; adjoining.” *Adjacent*, Oxford English Dictionary, <https://www.oed.com/view/Entry/2414>. While Shaulis’ kitchen is the central area of the house, and the door to the basement is located in the kitchen, this does not automatically mean that all areas of the house are adjacent to the kitchen. The basement stairs are adjacent to the kitchen where the OAG agents arrested Shaulis, but the basement itself, and particularly the man cave

² For convenience, the Court will refer to these as *Buie* prongs one and two, respectively.

where the OAG agents discovered the firearms, is not adjacent to the kitchen. The kitchen is neither neighboring, bordering, nor contiguous with the basement as a whole. The Third Circuit has not provided a test for determining whether a particular area of a home is or is not “immediately adjacent” to the area of arrest, but the inquiry is highly fact-specific and this Court’s analysis is based on the house’s “particular configuration.” *See United States v. Burrows*, 48 F.3d 1011, 1016 (7th Cir. 1995).

The Court holds that the man cave and basement were not immediately adjacent to the kitchen. They were separated from the kitchen by the basement door and stairs, and the man cave was separated further by the remainder of the basement. This separation between arrest location and sweep location is larger than the separation of a kitchen and living room by a bar counter, which the Sixth Circuit held was sufficient separation to render the area searched not “immediately adjacent.” *See United States v. Archibald*, 589 F.3d 289, 293, 298 (6th Cir. 2009). This is not enough to support a suspicionless search of the home, no matter how unintrusive it may have been.³

The cases the Government cites in support of its position are all distinguishable. In *United States v. Charles*, the police searched an open storage unit after arresting the defendant, and the court upheld the search under *Buie* prong one. 469 F.3d 402, 405–06 (5th Cir. 2006). However, the search was of a storage unit at a storage facility, not at the defendant’s home, an area that has long been afforded special protection under the Fourth Amendment. *See United States v. Kyllo*, 533 U.S. 27, 31 (2001) (“At the very core of the Fourth Amendment stands the right of a man to

³ The Court does not intend to suggest that a protective sweep is *de minimis*, but recognizes that a protective sweep is a much less severe intrusion than would be the execution of a search in conjunction with a full search warrant. *See Buie*, 494 U.S. at 333–34.

retreat into his own home and there be free from unreasonable governmental intrusion.” (internal citations and quotations omitted)). Here, Shaulis was arrested inside his own home, not in public, and so the Fourth Amendment applies with stronger force, the governmental intrusion is greater, and there is accordingly more weight in favor of restricting the Government’s power to search. The ability of the Government to search without suspicion is less when the search is at a defendant’s home. The Government also cites *United States v. Thomas*, where the court upheld a search of a bedroom down a hallway from where law enforcement arrested the defendant because every room swept “could be immediately accessed from the hallway.” 429 F.3d 282, 287 (D.C. Cir. 2005). Here, however, at an absolute minimum, the den in the basement could not be “immediately accessed” from the kitchen where the OAG agents arrested Shaulis. Accordingly, the Court holds that the OAG agents needed reasonable suspicion to sweep the basement and the den.

2. The OAG Agents Had Reasonable Suspicion to Conduct the Protective Sweep

Because the Court agrees with Shaulis that the OAG agents needed reasonable suspicion to sweep the basement, it must proceed to address the Government’s alternate argument in support of the constitutionality of the OAG Sweep: that the OAG agents had reasonable suspicion to sweep the basement. The Court agrees with the Government that the OAG agents had reasonable suspicion to sweep the basement.

Reasonable suspicion is a lower standard than probable cause, and requires “considerably less” than a preponderance of the evidence that criminal activity is afoot. *See Illinois v. Wardlow*, 528 U.S. 119, 123 (2000). To justify a protective sweep, there must be “articulable facts which, taken together with the rational inferences from those facts, would warrant a reasonably prudent

officer in believing that the area to be swept harbored an individual posing a danger to those on the arrest scene.” *Buie*, 494 U.S. at 334. In determining whether reasonable suspicion existed in any particular instance, a court must be guided by “commonsense judgments and inferences about human behavior,” because the Constitution cannot demand “scientific certainty from judges and law enforcement officers where none exists.” *Wardlow*, 528 U.S. at 124–25.

Shaulis contends that the OAG agents had no reasonable suspicion to justify a protective sweep and also that any justifications now existing in the record are a product of consultation with the Government’s attorneys to prepare them for testifying. (ECF No. 66 at 11.) In response, the Government argues that several factors justified their reasonable suspicion to sweep the house, including: (1) Shaulis had a past conviction for unlawful possession of a firearm, evidencing his desire to hold firearms, even though he is not permitted to, raising the probability that there would be firearms in the residence; (2) Shaulis was being investigated in connection with drug trafficking and there is a well-known connection between drug traffickers and possession of firearms; (3) Shaulis’ residence was located in a rural area with a long approach, where someone might see the agents and prepare an assault; (4) the sliding back door was open, potentially implying that someone had recently entered or exited the residence in haste; (5) the OAG agents knocked and announced for a sustained period of time before a response came in the form of Cash’s appearance; (6) there was further delay before Shaulis himself appeared, potentially suggesting someone was preparing an assault in the meantime; (7) the agents found ammunition on the floor of the residence after entering the kitchen. (ECF No. 67 at 15–17.) In addition, the Court notes that the OAG agents were unaware of Shaulis’ wife’s location prior to

the arrest, and there was a possibility that she was still within the residence. (Gov't Ex. 2 at 1.32:7–15; Gov't Ex. 3 at 2.8:21–24.)

Shaulis attempts to rebut the Government's position by arguing that the Government's justification relies primarily on the ammunition found on the floor and the delay between the OAG Agents' knock and announce and Shaulis' appearance. (ECF No. 66 at 12–13.) Specifically, Shaulis argues that the OAG agents were enforcing Pennsylvania law, not federal law, and Shaulis is permitted to possess ammunition under Pennsylvania law, as are Cash and Shaulis' wife, so the presence of the ammunition cannot give rise to reasonable suspicion. (*Id.*) Shaulis also argues that the delay in his appearance at the top of the stairs is insufficient to create reasonable suspicion because it is difficult to hear what is going on upstairs while in the basement, and it takes time to exit the basement. (*Id.* at 13.) These arguments are unpersuasive, and the Court holds that the factors provided by the Government are sufficient to give rise to reasonable suspicion sufficient to justify a sweep of the basement.

The OAG agents arrested Shaulis in connection with a drug ring, and they believed that he had confederates in this drug ring. (Gov't Ex. 1 at 15:18–17:18.) Shaulis' record included a past conviction for unlawful possession of a firearm, suggesting that he might have a firearm in his possession or home. (Gov't Ex. 2 at 1.20:11–15.) There was a substantial delay between the knock and announce and Shaulis' appearance at the top of the basement stairs, and Shaulis closed the door when he exited, creating a potential shield for a hidden assailant. (*Id.* at 1.84:10–1.85:15.) There was ammunition lying on the floor of the household, and the OAG agents were not entirely certain of Shaulis' wife's whereabouts. (*Id.* at 1.32:7–15.) These factors, looked at in light of the totality of the circumstances, provided the OAG agents with a reasonable suspicion that someone

might be potentially hiding inside the house. Having determined that the OAG agents were lawfully in the basement during the sweep, this Court also holds that the firearms spotted by the OAG agents while sweeping the basement were in plain view.

3. The Search Warrant Affidavit Provided Probable Cause to Issue the Search Warrant

Shaulis argues that, even if the OAG agents did lawfully view the weapons and ammunition while sweeping the basement, the facts recited in the affidavit for the search warrant executed later are insufficient to give rise to probable cause. The Court holds that the affidavit recited sufficient facts to give rise to probable cause to grant a search warrant.

Probable cause exists when, “given all the circumstances set forth in the affidavit before [the Court,] there is a fair probability that contraband or evidence of a crime will be found in a particular place.” *Illinois v. Gates*, 462 U.S. 213, 238–39 (1983). The magistrate who issues the warrant must make a “practical, common-sense decision” to determine whether probable cause exists. *Id.* at 238. The affidavit must provide the magistrate with a “substantial basis” for determining whether probable cause exists. *Id.* at 239.

In evaluating the issuance of a search warrant in the context of a motion to suppress, this Court will uphold the warrant if “the affidavit on which it was based provided a substantial basis for finding probable cause.” *United States v. Hodge*, 246 F.3d 301, 305 (3d Cir. 2001). The Court need not determine if probable cause actually existed, but only if there was a substantial basis for the magistrate to find probable cause. The Court will limit its consideration to the facts in front of the magistrate—it will not consider material from outside the affidavit. *Id.* When the search warrant issues from a state court, this Court must determine whether probable cause existed for

that violation of state law, not federal law. *United States v. Jones*, 572 F. Supp. 2d 601, 613–14 (W.D. Pa. 2008). Accordingly, this Court must determine what state crimes are alleged in the search warrant, and if the issuing magistrate had a substantial basis for finding probable cause.

Shaulis argues that the affidavit in support of the search warrant only states that the affiant believes there is probable cause that illegal narcotics are in the house, not that there are firearms. Shaulis also argues that, although he personally is not permitted to possess a firearm, he was not serving a criminal justice sentence, so there is no bar to those living with him possessing firearms. Therefore, spotting a firearm in the house could not give rise to probable cause.

In response, the Government contends that the affidavit does recite sufficient facts to support a finding of probable cause because it lists Agent Barna's training, his investigation, Shaulis' past criminal record, the observations made by agents during the sweep, and the conversation between the OAG agents and Shaulis' wife where she stated that there may be marijuana in the man cave and a handgun in the house.

The affidavit indicates that the alleged violations are of "C.S.D.D.C.A., Title 35, Sections 13A16 et seq. [sic]," which this Court takes to refer to the Pennsylvania Controlled Substance Drug, Device, and Cosmetic Act, codified at Title 35 of the Pennsylvania Statutes. *See* 35 P.S. § 780-101; (Gov't Ex. 6.) This Court also believes that that the reference to "Sections 13A16 et seq." refers to 35 P.S. § 780-113(a)(16), (19), (30), (31), and (32), which deal with possession of controlled substances, including marijuana. This is further buttressed by the final paragraph of the affidavit which states that "your Affiant avers that there is probable cause that illegal narcotics are being

concealed” at Shaulis’ residence. (*See* Gov’t Ex. 6.) Accordingly, the Court believes that the search warrant was requested to search for evidence that Shaulis was in possession of illegal narcotics.

At the outset, the Court notes that Shaulis’ wife’s statement that Shaulis may have been in possession of marijuana in the man cave alone provides a substantial basis for a magistrate to conclude that there is probable cause that a search would find evidence of a violation of § 780-113. (*See* Gov’t Ex. 6.) Shaulis’ wife lived with him, which provides strong basis of knowledge for the magistrate to use in determining probable cause, and the possibility that she could be subject to criminal penalties if the OAG agents did find marijuana affords her some indicia of reliability. *See Commonwealth v. Baker*, 615 A.2d 23, 27 (Pa. 1992). However, in the interests of completion, the Court will examine the affidavit for other bases which provide probable cause.

Paragraphs one through five of the affidavit recite Agent Barna’s experience and training in narcotics investigations. (*Id.*) Paragraph six states that, as a result of an investigation into a methamphetamine ring, the OAG received an arrest warrant for Shaulis, telling the issuing magistrate that at least one other judge felt that there was probable cause to believe Shaulis had committed a crime. (*Id.*) Paragraph six also informs the magistrate that Shaulis has a previous conviction for unlawful possession of a firearm. (*Id.*) Paragraphs seven through nine next detail the events of the OAG Sweep and the observations the OAG agents made while arresting Shaulis, including finding firearms in plain view. (*Id.*) These grounds provide further support for the existence of a substantial basis for a magistrate to determine that probable cause existed that Shaulis had committed a crime. This Court cannot say that, based on the affidavit, the issuing

magistrate lacked a substantial basis to find probable cause. Accordingly, the Court will deny Shaulis' motion to suppress the evidence found during the OAG Sweep and resulting search.⁴

c. The ATF Sweep

Shaulis' objections to the ATF search are similar in substance to his arguments against the OAG Sweep: (1) the ATF agents were not permitted to enter the basement in order to execute the arrest warrant; (2) there was no reasonable suspicion to sweep the house after the ATF agents arrested Shaulis; and (3) the affidavit that Special Agent Kauffman filed to obtain the search warrant was insufficient to give rise to probable cause. As will be thoroughly examined below, each of these arguments fails.

1. The ATF Agents Were Permitted to Enter the Basement to Execute the Arrest Warrant

Shaulis argues that the ATF agents' entry through the basement was a pretext to search for firearms and ammunition in the basement, where the OAG agents had located similar contraband. (ECF No. 66 at 19–20.) However, whether the entry through the basement was or was not a pretext is irrelevant.

In executing an arrest warrant, law enforcement has the right to enter the suspect's house and search anywhere within the house where he might be found. *See Payton v. New York*, 445 U.S.

⁴ In light of the Court's holding that the issuing magistrate had a substantial basis upon which to find probable cause, the Court need not address the Government's argument that the good faith exception of *United States v. Leon* would apply to bar application of the exclusionary rule in this case. *See* 468 U.S. 897 (1984). In *Leon*, the Supreme Court stated that evidence seized in good faith, in reliance on a facially valid warrant, will not be suppressed. *Id.* at 918–22. The Third Circuit has enumerated four instances where the exception does not apply: (1) when the magistrate judge issues the warrant in reliance on a deliberately or recklessly false affidavit; (2) when the magistrate abandons his or her neutrality; (3) when the affidavit is so deficient as to render belief in its validity entirely unreasonable; and (4) when the warrant was so facially deficient that it failed to particularize the place to be searched or things to be seized. *See Hodge*, 246 F.3d at 308. None of those circumstances exist here.

573, 602–03 (1980) (“If there is sufficient evidence of a citizen’s participation in a felony to persuade a judicial officer that his arrest is justified, it is constitutionally reasonable to require him to open his doors to the officers of the law.”). An arrest warrant permits law enforcement to enter a residence when “there is reason to believe the suspect is within.” *Id.* at 603. *Payton* has developed into a two-part test; law enforcement must have a reasonable belief that: (1) the arrestee resides at the dwelling; and (2) the arrestee is present at the time of the entry. *United States v. Vasquez-Algarin*, 821 F.3d 467, 472 (3d Cir. 2016). Under Third Circuit precedent, *Payton*’s “reason to believe” standard is equivalent to probable cause. *Id.* at 477. Accordingly, so long as the ATF agents had probable cause to believe Shaulis was present in his residence on the morning of December 21, 2018, the Fourth Amendment permitted them to enter into his residence through both the basement doors and the back door in order to search for him. As detailed below, the Court holds that the ATF agents had the required probable cause to believe Shaulis was present and residing in the residence.

Shaulis does not dispute the fact that the ATF agents had an arrest warrant for Shaulis. Shaulis also does not dispute the fact that the ATF agents were aware that Shaulis resided at 591 Pike Run Road because the OAG agents had arrested him there the past summer, and that address was listed on court documents. (*See* Gov’t Exs. 4, 5.) The ATF agents executed the search warrant early in the morning, at a time when Shaulis was likely to be at home, before leaving for work. (ECF No. 57 at 40:6–11.) The ATF agents saw Shaulis’ truck in the driveway prior to his arrest, and saw a light on inside the residence. (*Id.* at 106:22–24; 79:1–10.) Further, Shaulis’ wife had informed the ATF agents that Shaulis was living at the residence as late as December 11, 2018. (Gov’t Ex. 24.)

These factors are sufficient to give rise to probable cause that Shaulis was in the residence at the time the ATF agents executed the arrest warrant. The ATF agents had an arrest warrant, Shaulis resided at the home, and the ATF agents reasonably believed he was present at the time they executed the arrest warrant. Nothing more is required to support probable cause.

The ATF agents observed the firearms and the ammunition in plain view while executing the arrest warrant and searching for Shaulis; the ATF agents had a lawful right to be in a position to view the firearms and ammunition; and the incriminating nature of the firearms and ammunition was plainly apparent. *See United States v. Menon*, 24 F.3d 550, 559 (3d Cir. 1994).

2. Even if the ATF Agents Had No Reasonable Suspicion to Conduct the Protective Sweep, the Protective Sweep Found No Incriminating Evidence

The testimony provided at the Suppression Hearing indicates that, during the protective sweep following Shaulis' arrest, and Kauffman's entry to the kitchen, the ATF agents found no incriminating material while performing the protective sweep, and no material from the sweep was included in the search warrant affidavit. (ECF No. 57 at 59: 18–21.) Shaulis contends that the affidavit filed in support of the search warrant, which recites that the ammunition and firearms were viewed during the "clearing/safety sweep" of the residence indicates that the ATF agents unlawfully viewed the ammunition during an unnecessary protective sweep. (ECF No.66 at 18–19; *see* Gov't Ex. 24.) However, Shaulis brought forward no testimony to show that this was the case, and Special Agent Kauffman testified that the "clearing" term "refers to the movement of the tactical team through the rest of the rooms looking for whatever we are looking for or whoever that is," *i.e.*, Shaulis. (ECF No. 57 at 67:19–25.) The Court finds this testimony sufficiently credible.

Accordingly, the Court will not proceed to further address Shaulis' arguments regarding the protective sweep conducted after the ATF agents arrested Shaulis.⁵

3. The Search Warrant Affidavit Provided Probable Cause to Issue the Search Warrant

Shaulis argues that, even if the ATF agents did lawfully view the weapons and ammunition in the basement, the facts recited in the affidavit for the search warrant executed later are insufficient to give rise to probable cause. The Court disagrees.

As noted above, probable cause exists when, "given all the circumstances set forth in the affidavit before [the Court,] there is a fair probability that contraband or evidence of a crime will be found in a particular place." *Illinois v. Gates*, 462 U.S. 213, 238–39 (1983). The magistrate who issues the warrant must make a "practical, common-sense decision" in determining probable cause. *Id.* at 238. The affidavit must provide the magistrate with a "substantial basis" for determining whether probable cause exists. *Id.* at 239.

In evaluating the issuance of a search warrant in the context of a motion to suppress, this Court will uphold the warrant if "the affidavit on which it was based provided a substantial basis for finding probable cause." *Hodge*, 246 F.3d at 305. The Court does not determine if probable cause actually existed, but only whether there was a substantial basis for the magistrate to find probable cause. The Court will limit its consideration to the facts in front of the magistrate judge—it will not consider material from outside the affidavit.

⁵ In addition, the Court notes that Special Agent Kauffman testified to spotting firearms in the gun safe and loose ammunition in the basement while clearing the basement, prior to becoming aware that the ATF agents upstairs had taken Shaulis into custody. (ECF No. 57 at 55:7–59:7.)

Shaulis argues that the mere fact that the ATF agents found firearms and ammunition in his residence is insufficient to support a probable cause determination to issue a search warrant. Shaulis' position boils down to the argument that any of the other residents of the house could have possessed the guns, rather than Shaulis. In support, Shaulis argues that either his wife or his son may have possessed the guns, and because of that possibility, a magistrate could not make a probable cause determination that executing a search warrant could find evidence of a crime. (ECF No. 66 at 23–24.)

The Government disagrees, and argues that Shaulis' standard misstates the requirements of probable cause, and that, if this Court adopted that standard, it would "require law enforcement to prove to a magistrate possession of a firearm by one individual, to the exclusion of all others, before even being issued a search warrant." (ECF No. 67 at 30.) The Court finds the Government's argument persuasive. It notes that several courts have held that when a law enforcement officer observes a firearm or ammunition in the residence of someone not permitted to possess it, they have probable cause to seize the firearm or ammunition. *See, e.g., United States v. Smith*, 62 F. App'x 419, 422 (3d Cir. 2003); *United States v. Zareck*, No. 09-cr-168, 2010 WL 5053916, at *18 (W.D. Pa Dec. 3, 2010); *Pitner v. Murrin*, No. 07-cv-355, 2008 WL 2552807, at *9 (E.D. Pa. June 25, 2008).

The affidavit supporting the search warrant contains ample support for a magistrate to have a substantial basis for probable cause. The first three paragraphs describe Special Agent Kauffman's credentials and experience. (Gov't Ex. 24.) Paragraphs four and five detail Shaulis' residence, and Special Agent Kauffman's basis for believing that Shaulis resided there. (*Id.*) Paragraphs seven and eight describe the OAG and ATF Sweeps, including the guns found during

those sweeps, and paragraph nine states his prior conviction for unlawful possession of a firearm. (*Id.*) This information is sufficient to give a magistrate a substantial basis to find probable cause. The Government need not prove to a certainty that weapons found in the home of one who may not lawfully possess the weapons is indeed the owner.⁶

V. Conclusion

For the foregoing reasons, the Court will deny both of Shaulis' Motions to Suppress in full. An appropriate order follows.

⁶ In light of this determination, the Court need not address the Government's contention that the good faith exception would apply to the ATF Sweep as well as to the OAG Sweep. The Court does note, however, that it does not appear that any of the circumstances that would bar application of the good faith doctrine are applicable here. *See Hodge*, 246 F.3d at 308.

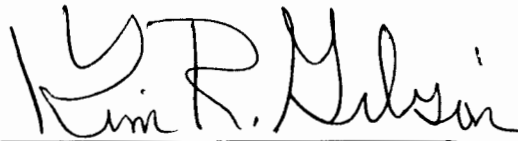
IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA,)	
)	CRIMINAL NO. 3:18-33
v.)	
)	JUDGE KIM R. GIBSON
KELLY B. SHAULIS,)	
)	
Defendant.)	

ORDER

AND NOW, this 24th day of September, 2019, upon consideration of Defendant Kelly Shaulis' Motion to Suppress Physical Evidence (ECF No. 28) and Motion to Suppress Physical Evidence —ATF (ECF No. 54), the Court having held a Suppression Hearing and the parties having briefed the issue (ECF Nos. 40, 55, 66, 67), and in accordance with the foregoing Memorandum Opinion, **IT IS HEREBY ORDERED** that Defendant's Motions are **DENIED**.

BY THE COURT:



KIM R. GIBSON
UNITED STATES DISTRICT JUDGE